IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

Crl.MC.No. 1655 of 2004()

CRIME NO. 309/04 OF VADAKKENCHERRY POLICE STATION
PALAKKAD

PETITIONER: ACCUSED.

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1. P.RAMANKUTTY, VIAKASANA STANDING COMMITTEE CHAIRMAN, VADAKKENCHERRY GRAMA PANCHAYATH, VADAKKANCHERRY, PALAKKAD.

2. P.K.VISWANATHAN, KSHEMAKARYA STANDING COMMITTEE CHAIRPERSON, VADAKKENCHERRY GRAMA PANCHAYATH, VADAKKENCHERRY, PALAKKAD.

3. C.THAMPU, VICE PRISEDENT, VADAKKENCHERRY GRAMA PANCHAYATH, VADAKKENCHERRY, PALAKKAD.

4. YESUDASAN.V.D. OVERSEER, VADAKKENCHERRY GRAMA PANCHAYATH, VADAKKENCHERRY, PALAKKAD.

BY ADV. SRI.S.RAMESH BABU

RESPONDENTS: RESPONDENTS.

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1. STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE, VADAKKENCHERRY POLICE STATION, PALAKKAD.

3. K.A.THOMAS, SUB INSPECTOR OF POLICE, VADAKKENCHERRY, PALAKKAD.

ADDL.R4. SURYAPRAKASH, S/O. THANKAPPAN, KOLAKKODE HOUSE, KOLAKKODE DESOM PARUVASSERY POST, PALAKKAD.

5. OMANA, D/O. THANKAPPAN, DO. DO.
(ADD.4 & 5 IMPLEADED AS PER ORDER ON CR.MA 8136/04 DT.15.2.07)

R3 TO 5 BY ADV. SRI.T.M.CHANDRAN
R1 & 2 BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 15/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO.1655 OF 2004

Dated this the 15th day of February, 2007

ORDER

The petitioners are accused in Crime No.309/04 of Vadakkencherry Police Station registered under Secs.448, 427, 294(b) and 506(1) read with Secv.34 of the IPC. They are Chairmen of the Vikasana Standing Committee, Kshemakarya Standing Committee, Vice President and Overseer respectively of the Vadakkencherry Grama Panchayat. They have come to this Court with this petition under Sec.482 of the Cr.P.C. praying that the extraordinary inherent jurisdiction available to this Court under Sec.482 of the Cr.P.C. may be invoked to quash the said F.I.R. registered against them.

2. Respondents 1 to 3 have entered appearance. Additional respondents 4 and 5 have been subsequently impleaded. Arguments have been heard of all the three counsel.

3. It the grievance of the petitioners that the police, in collusion with the additional respondents 4 and 5, are initiating vexatious proceedings against the petitioners. The petitioners were acting only in the discharge of their official duties under the provisions of the Kerala Panchayat Raj Act and the Rules thereunder. The 5th respondent was found to occupy a shed constructed illegally in the puramboke land belonging to the Panchayat over which she had no rights. After taking action, in accordance with the provisions of the Kerala Panchayat Raj Act and Rules as decided by the Committee of the Panchayat, the unauthorised shed was demolished and removed. Instead of affording assistance to the Panchayat authorities, as required by law, the police officials acted hand in glove with the 5th respondent and her brother – the 4th respondent and started initiating false and vexatious proceedings against the petitioners by registering the F.I.R. in question. It is contended that the petitioners are protected by the provisions of the Panchayat Raj Act and Rules and that respondents 4 and 5, who have not chosen to challenge the order passed by the Panchayat directing the 5th respondent to remove the unauthorised structure, has no

right in law to complain against the official duties performed lawfully by the petitioners. The learned counsel for the petitioners submits that subsequently the Panchayat was compelled to come to this Court and seek a direction to the police to afford the requisite police assistance for enforcement of the decision in question. The learned counsel relies on the judgment dated 3/12/2004 in W.P.(c) No.28635 of 2004 passed by this Court.

4. Annexures-I to III produced along with this petition show clearly that the Panchayat was initiating proceedings in accordance with law against respondent No.5. The First Information Statement is seen lodged not by the 5th respondent against whom the order was passed; but by the 4th respondent. The 5th respondent and/or the 4th respondent have not chosen to take legal steps to challenge the decision of the Panchayat directing the 5th respondent to remove the unauthorised obstruction. The averments in the complaint show that the complainant i.e., the 4th respondent was not present at the scene when the alleged incident took place. A sweeping allegation has been raised in the following words by the 4th respondent:

5. The learned counsel for the petitioner submits that except the above sweeping allegation made by the 4th respondent that the 5th respondent was intimidated and abused, there is no other specific allegation raised which is not traceable to the legal obligation of the petitioners as the officials of the Panchayat to carry out their lawful duties .

6. Having considered all the relevant inputs, I am satisfied that there is merit in the prayer for quashing of the F.I.R. It is evident from the totality of the circumstances that respondents 4 and 5, who have not chosen to challenge the decision of the Panchayat to remove the unauthorised obstruction in accordance with law so far, are only attempting to vex and harass the petitioners who are officials of the Panchayat to deter them from pursuing legal action. The 4th and 5th respondents, who have come on record, have no case that at any time they had

attempted to challenge the action taken by the Panchayat against them.

7. I am, in these circumstances, satisfied that this is an eminently fit case where the powers under Sec.482 of the Cr.P.C. can and ought to be invoked to prematurely terminate the proceedings initiated on the basis of Annexure-IV – F.I.R. registered by the respondents – police.

8. In the result:

(i) This Crl.M.C. is allowed.

(ii) The F.I.R. in Crime No.309/04 a copy of which is produced as Annexure-IV and all further action in pursuance of that are set aside.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge